FILE COPY

Office-Supreme Court, U.S.
FILED
AUG 22 1959
JAMES R. BROWNING, Clerk

No. 151

In the

Supreme Court of the United States

October Term 1959

CATHERINE A. LIFTZ,

Petitioner

vs.

ARTHUR S. FLEMING, Secretary of Health, Education and Welfare,

Respondent

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

REPLY BRIEF FOR PETITIONER

ROWLAND W. FINCH
Attorney for Petitioner
2163 Penobscot Bldg.
Detroit 26, Michigan

In the

SUPREME COURT OF THE UNITED STATES

October Term 1959

No. 151

CATHERINE A. LIETZ,

Petitioner,

vs.

ARTHUR S. FLEMING, Secretary of Health, Education and Welfare,

Respondent.

On Petition for a Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit.

REPLY BRIEF FOR PETITIONER

ARGUMENT

1. Section 202(e)(1) of the Social Security Laws (42 USC 402) does not prevent payment of survivor's insurance benefits to widows under Section 109 of the 1954 Amendments, as these two statutes provide two distinct bases for determining monthly survivorship benefits under the Social Security Laws.

In 42 USC 402, monthly benefits to a widow were conditioned on death of a fully insured decedent after 1939,

while in Section 109 of the 1954 Amendments, benefits were provided in cases where the decedent died prior to September 1, 1950, not fully insured, but with six quarters of coverage. These two statutes cover entirely different situations and each should be given full credence.

We submit that the death after 1939 clause in 42 USC 402 does not prevent the payment of survivor's insurance benefits under Section 109 of the 1954 amendments (42 USC 415, note, 68 Stat. 1084, 83rd Cong. 2d Sess.), for the following reasons:

Section 109 of the 1954 Amendments was passed as a separate law, known as Public Law 761 of the 83rd Congress, 2d Session 1954. This law was incorporated in the 1954 Amendments to the Social Security Laws as Section 109.

The title of Public Law 761 was:

> "An Act to amend the Social Security Act . . . so as to extend coverage under the Old Age and survivors insurance program, increase benefits payable thereunder . . . and for other purposes."

From the title of the law it is apparent that Congress intended to create new substantive benefits for widows who could qualify under the terms of the new legislation.

Public Law 761 consisted of subparagraphs (a) and (b). Subparagraph (a) related solely to the creation of a fully insured status in individuals who died prior to September 1, 1950, who at time of death were not fully insured but who had six quarters of coverage.

Subparagraph (b) of the law made the new fully insured status "applicable only in the case of monthly benefits under Section 202 of the Social Security Act for months after August 1954, on the basis of applications filed after such month."

Section 202 of the Social Security Laws covered Old Age; child's; wife's; husband's; widow's; widower's; mother's and parent's Insurance benefits.

Through the entire presentation of petitioner's claim in the administrative agency; in the District Court; in the Court of Appeals; and in all of the governments briefs and argument, subparagraph (b) of Public Law 761 has not been cited by the Government in quoting the law, and has not been mentioned as having any pertinency to petitioner's claim. (See Respondent's Brief, Appendix p. 12)

As a result, the government has asserted that all that Section 109 did was to redefine what a fully insured individual was. This it is pointed out is what Congress provided in subparagraph (a) of Section 109.

But subparagraph (b) also is part of the new law and it is that part of the law that creates the benefits which petitioner says she is entitled to.

2. By making the new fully insured status under subparagraph (a) applicable under Subparagraph (b), in the case of monthly benefits under Sec. 202 of the Social Security laws, Congress provided a new right to widows which theretofore did not exist.

It is apparent that Congress intended to create a new class of beneficiaries under Public Law 761, distinct and apart from those previously created in 42 USC 402, in 1939, by providing a new fully insured status for those who died prior to September 1950, *not fully insured* but with six quarters of coverage, and in subparagraph (b),

made this new status applicable in the case of monthly benefits under Section 202 of the Social Security laws after August, 1954.

In framing Public Law 761, Congress did not restrict its benefits to those individuals who died after 1939. The sole restriction in the 1954 law as to date of death was that death must have occurred before September 1950. Petitioner's decedent has all of the requirements of Public Law 761 and she therefore is entitled to monthly benefits pursuant to subparagraph (b) of Public Law 761 (Section 109 of the 1954 Amendments).

3. The words in subparagraph (b) that the new status created in subparagraph (a) is "applicable only in the case of monthly benefits. . . " means that those falling within the new category of "fully insured" qualify for survivorship benefits.

In *Lupa's Estate* v. *Marcelle*, 214 Fed. (2) 942, CCA 2, the words "in the case of" were held to mean "in the category of". If this interpretation of such words is adopted, the words in subparagraph (b) ". . . in the case of monthly benefits under Section 202 of the Social Security Act . . ." would mean that monthly benefits would be payable to those who qualify under subparagraph (a) of Section 109, in the categories of beneficiaries named in Section 202 of the Social Security Act, including widows.

Congress did not by any language in Section 109 (Public Law 761) make 42 USC 402 applicable to Section 109. In other words the death after 1939 requirement in the early law was not made a part of the 1954 amendment by Congress either expressly or by implication. If Congress had intended to restrict the rights of beneficiaries under Section 109 to those who were the survivors of decedents who died after 1939 it could have done so by stating in

Section 109 that the new law would cover those who died before September, 1950 *and after 1939*. This however was not done by Congress, for the apparent reason that the two laws related to two different factual situations.

4. The fact that widow's benefits were first made available after 1939 under 53 Stat. 1360, 1364-1365, did not prevent Congress from changing the status quo in 1954.

Respondent lays great stress (its brief pages 5 and 6) on the intention of Congress when the early legislation on Social Security was enacted, to irrevocably fix 1940 as the date from which payments would commence. The view of Respondent in this respect would be correct if the Social Security System were a static instead of a dynamic piece of social legislation. Instead of being static the history of Social Security legislation shows that the objective has been, since the system was established, to extend coverage and improve benefits from time to time. This was explained to the House Ways and Means Committee during the hearings on the 1954 Amendments, by Secretary Hobby (Page 30) where she said in part:

> "During the past year, the Department conducted an intensive study . . . with the objective of developing recommendations to improve these programs to meet the present day needs of the American people more adequately."

Mrs. Hobby commented on the specific matter involved in this petition before this Court when testifying before the Senate Finance Committee on the 1954 Amendments. She said in part:

> "There are certain aspects of the bill, added by the House Ways and Means Committee . . . *These include provisions relating to eligibility of widows*, children and dependent parents *of wage earners who*

died before the enactment of the 1950 Amendments and who had the requisite number of quarters of coverage so that they would have been insured if they had died subsequently." (Emphasis added.)

We stress these statements because they show that Congress in dealing with Social Security legislation has in various amendments, broadened the base of coverage with the ultimate objective of universal coverage, and that specific provision was made in the 1954 amendments for widows in petitioner's category to give them benefits if the facts warranted payments.

In any event, since the 1954 Amendment called for payments to survivors after August 1954, such provision did not conflict with the original intent of Congress that no payments should be made prior to 1940.

Congress had the power to provide for aged widows in Section 109 of the 1954 Amendments by broadening coverage under the Social Security Act to include the few who came within the new provision.

5. **Respondents reliance on an erroneous statement in the Senate Finance Committee report** (p. 6, 7 of its brief) that death had to occur after 1939 in order that a widow could claim benefits under the 1954 amendments, is of no force. (See petitioner's petition page 5 and 6). All that respondent cites to bolster up this erroneous statement by the Senate Finance Committee is what appeared in the Committee report under the heading "Eligibility for benefits." This sub-heading was under a principal heading "Summary of principal provisions of the bill."

As we explained in our petition, there was no provision of the bill (Sec. 109 of the 1954 Amendments) requiring death to have occurred *after 1939* in order to secure the benefits of Section 109 as was indicated in the report of the Senate Finance Committee. Therefore the citation

of the Senate Committee's misleading statement should receive no credence insofar as it affects legislative intention.

6. Respondents mention of a proposed amendment to Sec. 109 involved unenacted legislation which was never released from Committee and was never presented to Congress. Petitioner submits that such unenacted legislation cannot be considered as a legislative interpretation of Sec. 109 of the 1954 Amendments. *R.R. Commission* v. *Gas Corp.*, 186 S.W. 2d 217.

7. Administrative Construction. In respect to the regulations of the Social Security Administration which were in effect until 1951 and carried forward by implication, involving the rights of a widow, and conditioning her survivorship rights on death of the husband after 1939, these regulations were correctly interpretive of the 1939 law (42 USC 402 (e) (1). But as to such unchanged regulations superseding and invalidating the express language of Congress in Sec. 109 of the 1954 amendments, that is another matter. Petitioner agrees that regulations are entitled to great weight as to any matters within the scope of the law on which they were based. But where the administrative agency adopts an interpretation contrary to the enactment of Congress, as it has done in this case by adding the death after 1939 limitation in 42 USC 402 to Section 109 of the 1954 amendments, such interpretation is not entitled to any weight.

Furthermore, this Court has held that the final construction of a statute rests with the court and not the executive department, and that an administrative construction is not controlling on the courts. *Burnet* v. *Chicago Portrait Co.*, 52 S. Ct. 275, 285 U.S. 1.

Petitioner therefore submits that the administrative determinations, and the regulations of the Social Security Administration, even if adverse to petitioner, are not compelling in determining whether the death after 1939 clause in the early law must be read into Sec. 209 of the 1954 Amendments.

CONCLUSION

For the foregoing reasons, and for the reasons contained in petitioner's petition, it is respectfully submitted that the petition for a Writ of Certiorari should be granted.

ROWLAND W. FIXEL
Attorney for Petitioner
2163 Penobscot Bldg.,
Detroit 26, Michigan

August, 1959.